

**Consideration of Recommendation for Preliminary Adoption of Proposed New Rule for Creek Gravel Extractions from Floodways; Administrative Cause No. 07-203W**

During the October 2007 meeting, Richard Cockrum asked about the regulation of stone and gravel extractions from rivers and streams. He suggested the activity could have an adverse impact on fisheries and other wildlife, as well as botanical resources. Cockrum asked whether the Flood Control Act could be applied to regulate the activity.

Ron McAhron responded there have been discussions within DNR concerning gravel extractions from creek beds. His understanding is that, at one time, there was an informal DNR committee looking into the feasibility and legality of developing rules to address this issue. A decision from the Switzerland Circuit Court dismissing an action by the local prosecutor, which was later affirmed by the Court of Appeals of Indiana, has discouraged the agency from moving forward with rule adoption. But the DNR was not a party to the prosecution or appeal, and the dismissal was entered in the absence of any standards. McAhron reflected that the agency would take another look at rule adoption, and prepare a draft for discussion by the Advisory Council.

As a consequence, a working draft is set forth below. The draft was prepared by the Division of Water and the Division of Fish and Wildlife. The draft is structured so that the Advisory Council could recommend preliminary adoption to the Natural Resources Commission. Possible modifications to the draft or points for clarification may be suggested during the Advisory Council meeting.

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Proposed Rule**  
LSA Document #08-

**DIGEST**

Adds 312 IAC 10-5-9 to provide a general license for the removal of creek rock, and adds 312 IAC 10-5-10 to govern the terms and conditions of individual licenses for this purpose. Adds definitions in 312 IAC 10-2 to assist with the implementation of 312 IAC 10-5-9 and 312 IAC 10-5-10. Effective 30 days after filing with the secretary of state.

**312 IAC 10-2-16.5**  
**312 IAC 10-2-24.5**  
**312 IAC 10-2-33.6**  
**312 IAC 10-2-33.7**  
**312 IAC 10-5-9**  
**312 IAC 10-5-10**

SECTION 1. 312 IAC 10-2-16.5 IS ADDED TO READ AS FOLLOWS:

**312 IAC 10-2-16.5 “Creek rock” defined**  
**Authority: IC 14-10-2-4; IC 14-28-1-5**  
**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 16.5. “Creek rock” means each of the following located within a waterway:**

- (1) Sand.**
- (2) Gravel.**
- (3) Rock.**
- (4) Slab rock.**
- (5) Hard mineral resources.** (*Natural Resources Commission; 312 IAC 10-2-16.5*)

SECTION 2. 312 IAC 10-2-24.5 IS ADDED TO READ AS FOLLOWS:

**312 IAC 10-2-24.5 “Hard mineral resources” defined**  
**Authority: IC 14-10-2-4; IC 14-28-1-5**  
**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 24.5. “Hard mineral resources” means naturally occurring alluvial deposits of the following:**

- (1) Gold.**
- (2) Platinum.**
- (3) Silver.**

- (4) Lead.
- (5) Copper.
- (6) Diamonds and other gemstones.
- (7) Other similar minerals. (*Natural Resources Commission; 312 IAC 10-2-24.5*)

SECTION 3. 312 IAC 10-2-33.6 IS ADDED TO READ AS FOLLOWS:

**312 IAC 10-2-33.6 “Recreational dredging” defined**

**Authority:** IC 14-10-2-4; IC 14-28-1-5

**Affected:** IC 14-28-1; IC 14-29-1

**Sec. 33.6. “Recreational dredging” means an activity which complies with both of the following:**

- (1) Occurs exclusively within an active channel and either:**
  - (A) beneath the water surface; or**
  - (B) upon non-vegetated sand or gravel bars.**
- (2) Uses either:**
  - (A) A suction dredge with an intake diameter not larger than three (3) inches and with a rating of not more than fifteen (15) horsepower; or**
  - (B) Small powered sluice equipment and related tools.** (*Natural Resources Commission; 312 IAC 10-2-33.6*)

SECTION 4. 312 IAC 10-2-33.7 IS ADDED TO READ AS FOLLOWS:

**312 IAC 10-2-33.7 “Recreational panning” defined**

**Authority:** IC 14-10-2-4; IC 14-28-1-5

**Affected:** IC 14-28-1; IC 14-29-1

**Sec. 33.7. “Recreational panning” means the use of non-motorized equipment such as a pan, sluice box, or a pick and shovel.** (*Natural Resources Commission; 312 IAC 10-2-33.6*)

SECTION 5. 312 IAC 10-5-9 IS ADDED TO READ AS FOLLOWS:

**312 IAC 10-5-9 Creek rock removal; general license without notice**

**Authority:** IC 14-10-2-4; IC 14-28-1-5

**Affected:** IC 14-28-1; IC 14-29-1

**Sec. 9. (a) This section establishes a general license without notice for the removal of creek rock from a waterway which is subject to IC 14-28-1 and 312 IAC 10. To act under this section, a person must own (or have written permission from the person who owns) the parcel of a waterway where creek rock is removed. A navigable waterway that is subject to IC 14-29-1 or 312 IAC 6 does not qualify for a general license under this section.**

(b) Without a written license under IC 14-28-1 and without notice to the department, a person may remove creek rock from the parcel, if the person satisfies each of the following conditions:

(1) Not more than ten (10) cubic yards of creek rock is removed within one

(1) calendar year from the parcel.

(2) The creek rock is removed exclusively by the following methods:

(A) Hand.

(B) Hand tools.

(C) A scoop-type tractor loader with minimal fallback of material.

The use of a bulldozer or rock crusher does not qualify under this clause.

(3) The creek rock is removed between July 1 and March 31 of the following year.

(4) The creek rock is removed only from sand bars and gravel bars within the waterway. The excavation of waterway banks does not qualify under this clause.

(c) Without a written license under IC 14-28-1 and without notice to the department, a person may conduct hand panning from the parcel. (*Natural Resources Commission; 312 IAC 10-5-9*)

SECTION 6. 312 IAC 10-5-10 IS ADDED TO READ AS FOLLOWS:

**312 IAC 10-5-10 Creek rock removal; general license with notice**

**Authority: IC 14-10-2-4; IC 14-28-1-5**

**Affected: IC 14-28-1; IC 14-29-1**

**Sec. 10. (a)** This section establishes a general license with notice for the removal of creek rock from a waterway which is subject to IC 14-28-1 and 312 IAC 10. To act under this section, a person must own (or have written permission from the person who owns) the parcel of a waterway where creek rock is removed. A navigable waterway that is subject to IC 14-29-1 or 312 IAC 6 does not qualify for a general license under this section.

(b) Without a written license under IC 14-28-1 but with notice to the department, a person may remove creek rock or conduct recreational dredging from the parcel, if the person complies with this section.

(c) A person who wishes to remove creek rock under this section must file a written notice, on a department form, with the division of fish and wildlife. The notice must include the following information:

(1) Identification of the waterway and a description of the parcel where the removal would occur, including the following:

(A) Terminal points of the project.

(B) Access routes to the project referenced to readily a discernable landmark, such as a bridge or a dam.

(C) The project and access routes must be illustrated on at least one (1) of the following:

(i) United States Geological Survey topographic map; or

(iii) Another map determined by the department to satisfy the purposes of this clause.

(2) The name, address, and telephone number of the person who is seeking the general license. If any of the activities would be performed on behalf of the person by an independent contractor, the name, address, and telephone number of the independent contractor must also be provided.

(3) Documentation to demonstrate the person seeking the general license is the owner of the parcel (or has written permission from the person who is the owner of the parcel).

(4) A statement in which the person agrees to comply with the following conditions:

(A) Creek rock would be removed exclusively through the use of hand-operated equipment or mechanical means, such as an excavator with a bucket with minimal fallback, and would not be pushed and stockpiled. Examples of equipment that qualify for use under this clause include a small tractor, backhoe, or front-end loader.

Examples of equipment that do not qualify under this clause include a bulldozer or a rock crusher.

(B) No access road would be constructed to do any of the following:

(i) Destroy more than one-half (1/2) of an acre of trees within a floodway;

(ii) Traverse a wetland indicated on the national wetlands inventory map unless pads are used;

(iii) Raise the elevation of the flood plain; or

(iv) Cross a waterway.

(C) Access to the project would exclusively from one (1) side of the waterway.

(D) Not more than one hundred (100) cubic yards of creek gravel would be removed from the waterway within two (2) consecutive years.

(E) Recreational dredging would be limited to the following:

(i) July 1 through March 31 of the following year; and

(ii) a maximum of thirty (30) days.

(d) The following areas do not qualify for a general license under this section:

(1) Within one-half (1/2) mile of any of the following:

(A) A species listed in the Indiana Register at 15 IR 312070469 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.

(B) A known mussel resource.

(C) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

(2) Within a river or stream listed in the Indiana Register at 16 IR 1677 on the Outstanding Rivers List for Indiana.

**(e) Within ten (10) days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a written notice under subsection (c), the division of fish and wildlife shall provide a written response that does one (1) of the following:**

- (1) Approves the terms of the notice.**
  - (2) Provides additional conditions to the approval.**
  - (3) Requires additional information.**
  - (4) Requires the person to obtain a permit for the activity under IC 14-28-1 or IC 14-29-1,**
- or both.**

**If the department does not respond under this subsection in a timely fashion, the written notice is approved.**

**(f) A copy of the written notice provided under subsection (c) and any additional conditions provided by the department under subsection (d) must be posted by the person in a conspicuous location at the site of the project.**

**(g) The authorization for activities conducted under this section expires two (2) years after the date of issuance by the department.**

**(h) The authorization for activities conducted under this section does not waive permit requirements of other state, federal, or local government.**

**(i) A person who elects to act under this general license with notice must comply with the terms of the written notice provided under subsection (c) and with any additional conditions provided by the department under subsection (e). Failure to comply with these terms and conditions may result in the revocation of the general license, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a license issued under IC 14-28-1 or 312 IAC 10. (Natural Resources Commission; 312 IAC 10-5-10)**